

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jessica Russo	Team: Squad #10	CCRB Case #: 202005678	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Monday, 08/17/2020 1:00 AM	Location of Incident: § 87(2)(b)	18 Mo. SOL 5/4/2022	Precinct: 46		
Date/Time CV Reported Mon, 08/17/2020 11:59 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Mon, 08/17/2020 11:59 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Geordany Gonzalez	19400	965145	046 PCT
2. POM Oshane Cole	08641	963460	046 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Massiel Pena	04208	967643	046 PCT
2. POM Valon Rugova	07286	957113	046 PCT
3. POM Jason Cruz	11637	941599	046 PCT
4. POM Mohamed Ali	21999	964871	046 PCT
5. POM Jasen Perez	10775	949470	046 PCT
6. POM Jason Santana	15369	951202	046 PCT
7. POM Saad Mughal	19928	964179	046 PCT
8. POM Kelven Hernandez	08576	969117	046 PCT
9. POM Md Haque	12377	952828	046 PCT
10. POF April Maxwell	13941	956898	046 PCT
11. POF Felicia Diaz	22852	952676	046 PCT
12. POF Carolyn Daley	09308	967471	046 PCT
13. POM Jacob Newman	19914	933090	046 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Geordany Gonzalez	Abuse: Police Officer Geordany Gonzalez entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B . POM Oshane Cole	Abuse: Police Officer O'Shane Cole entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
C . POM Geordany Gonzalez	Force: Police Officer Geordany Gonzalez used physical force against § 87(2)(b)	§ 87(2)(b)

Officer(s)	Allegation	Investigator Recommendation
D . POM Oshane Cole	Force: Police Officer O'Shane Cole used physical force against § 87(2)(b)	
E . POM Geordany Gonzalez	Force: Police Officer Geordany Gonzalez used physical force against § 87(2)(b)	
F . POM Oshane Cole	Force: Police Officer O'Shane Cole used physical force against § 87(2)(b)	
G . POM Oshane Cole	Discourtesy: Police Officer O'Shane Cole spoke discourteously to an individual.	
H . POM Oshane Cole	Off. Language: Police Officer O'Shane Cole made remarks to an individual based upon the gender of an individual.	

Case Summary

On August 17, 2020, § 87(2)(b) filed this complaint with the CCRB via the Call Processing System.

On August 17, 2020, at approximately 1 a.m., Police Officer Geordany Gonzalez and Police Officer O'Shane Cole—both from the 46th Precinct—responded to § 87(2)(b) in the Bronx regarding a noise complaint. PO Gonzalez opened the iron door connected to the gate surrounding § 87(2)(b) home, after which he and PO Cole allegedly entered the porch without consent (**Allegations A and B: Abuse of Authority-Entry of Premises**, § 87(2)(g) PO Gonzalez and PO Cole placed § 87(2)(b) in handcuffs, during which they pushed her to the ground and allegedly used excessive force (**Allegations C and D: Force-Physical Force**, § 87(2)(g) The officers escorted § 87(2)(b) into a marked NYPD vehicle, where they allegedly pushed her inside (**Allegations E and F: Force-Physical Force**, § 87(2)(g) Before leaving the scene, PO Cole made the statement, “Come say it to my face, pussy” to an unknown individual (**Allegation G: Discourtesy-Word**, § 87(2)(g) (**Allegation H: Offensive Language**, § 87(2)(g) PO Cole and PO Gonzalez returned to their marked vehicle that transported § 87(2)(b) and her speaker, which was vouchered as arrest evidence, to the stationhouse.

PO Gonzalez issued § 87(2)(b) a summons § 87(2)(b) for unreasonable noise (BR01).

The investigation received BWC footage from PO Gonzalez (BR02) and PO Cole (BR03) in connection with this investigation.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Geordany Gonzalez entered § 87(2)(b) in the Bronx.

Allegation (B) Abuse of Authority: Police Officer O'Shane Cole entered § 87(2)(b) in the Bronx.

It is undisputed that PO Gonzalez and PO Cole entered the porch of § 87(2)(b) home without consent or a search warrant.

PO Gonzalez's BWC (BR02) opens with his approach of § 87(2)(b) where the entrance to the barred gate surrounding the home is visibly open. There are multiple individuals outside of the gate surrounding the home, with other individuals congregated on the porch. At the 00:30 mark, the audio comes in and loud music coming from § 87(2)(b) home is audible. PO Gonzalez tells § 87(2)(b) who is sitting on the porch of her home, that he does not need to tell her to lower the music before issuing a summons, given that it is audible from about a block away. PO Gonzalez requested § 87(2)(b) ID, but she could not hear him due to the volume of the music. PO Gonzalez requested her ID two additional times, after which § 87(2)(b) told him that there was no ID. PO Cole, who is next to PO Gonzalez the entire time, says, “let's get the box”. PO Gonzalez agrees, after which they both ascend the steps that lead to the porch of § 87(2)(b) home.

§ 87(2)(b) (BR04) testified that PO Cole and PO Gonzalez opened the iron gate that leads to the porch of her home. PO Cole entered the porch, with PO Gonzalez following behind him. Neither officer said anything prior to their entry, including a request to enter. The officers did not ask § 87(2)(b) to lower the volume of the speaker.

§ 87(2)(b) § 87(2)(b) son, testified (BR05) that his family and neighbors were at § 87(2)(b) home, when PO Cole and PO Gonzalez arrived. PO Gonzalez opened the iron gate leading to the stairs and entered the porch. Neither officer requested permission to enter. § 87(2)(b) lowered the music prior to the officers entering the porch.

§ 87(2)(b) § 87(2)(b) daughter, testified (BR06) that her family and

neighbors were gathered at § 87(2)(b) home, playing music on the porch. There is a gate leading to the porch, which was open. There were a couple of neighbors outside of the gate, speaking to § 87(2)(b) who was on the porch. PO Cole and PO Gonzalez approached the home and mentioned that they received a noise complaint. PO Gonzalez asked § 87(2)(b) for her ID, which surprised § 87(2)(b) given that officers usually provide a warning for the loud music. § 87(2)(b) hesitated in providing ID, as she lowered the music prior to the officers speaking to her. The officers proceeded to enter the porch area, ascending the stairs leading up to it. § 87(2)(b) told the officers that they were not allowed in her home and asked them to leave. The officers proceeded to confiscate the speaker and did not leave.

PO Gonzalez (BR07) testified that he and PO Cole received a 311 call about a loud noise complaint at § 87(2)(b). Upon approach, PO Gonzalez had the windows of his patrol vehicle closed, but could hear the music from about a half a block away from § 87(2)(b) home. PO Gonzalez attempted to get § 87(2)(b) attention, waving his hands, and flashing his light in her direction. However, his attempts were ignored. PO Gonzalez retrieved a blank summons from his vehicle and returned to the location. When he returned, the music had been lowered. PO Gonzalez asked § 87(2)(b) for her ID about three times but, for an unknown reason, § 87(2)(b) did not provide her ID. § 87(2)(b) went inside of her home, after which PO Gonzalez and PO Cole decided to enter the porch to retrieve the speaker. He testified that it is common for such a device to be seized when the civilian is not properly issued a summons.

PO Cole's testimony is mostly consistent with PO Gonzalez's (BR08), except he did not know how many times § 87(2)(b) ID was requested or who, specifically, requested it from her.

People v. Theodore, 114 A.D.3d 814 (2014) found that, absent exceptional circumstances, police officers cannot enter the curtilage of a home without a warrant. The courts utilize the following four factors when determining whether an area is part of a curtilage of a home: 1) proximity to the home; 2) whether the area is within an enclosure surrounding the home; 3) the nature of the uses of the area, and 4) the steps taken to protect the area from observation by passerby (BR09).

PO Gonzalez's BWC, which captures the porch area clearly, shows that it is directly connected to the home. There is a gate surrounding the entire home, that is barred and allows full visibility inside. Although the entrance to the gate was open upon the officers' approach, it is unclear, after reviewing the BWC and statements, whether the gathering at the location was open to the public or invite-only, and what steps, if any, were taken to restrict entry into § 87(2)(b) home. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Force: Police Officer Geordany Gonzalez used physical force against § 87(2)(b)

Allegation (D) Force: Police Officer Oshane Cole used physical force against § 87(2)(b)

PO Gonzalez's BWC captures § 87(2)(b) apprehension most accurately. At the 1:27 mark, PO Gonzalez tells § 87(2)(b) that they are taking the speaker, after which she approaches him and protests the seizure. PO Gonzalez and PO Cole tell her to step back multiple times. At the 01:45 mark, PO Gonzalez makes a call for additional units to respond to the location. At the 1:58 mark, PO Gonzalez deems § 87(2)(b) under arrest after she engages in a brief struggle with PO Cole. The two officers attempt to place her in handcuffs. From the start of the handcuffing process, § 87(2)(b) is moving around and bringing her arms away from the officers' grips. § 87(2)(b) left arm is seen bent at the elbow, angled upwards, but who is grabbing her arm is not shown. PO Gonzalez's handcuffs are in his right hand, which he is also

using to grab § 87(2)(b) left upper arm. Her husband, § 87(2)(b) appears behind her and tells PO Gonzalez that she is not well. § 87(2)(b) is holding § 87(2)(b) from behind, while PO Gonzalez grabs her left upper arm, and PO Cole grabs her right wrist. § 87(2)(b) repeats that § 87(2)(b) is not well—specifically her arm. PO Cole bends § 87(2)(b) right arm behind her back, turning her to face the opposite direction. A handcuff is heard either opening or closing. § 87(2)(b) right arm is bent but lifted above her shoulder. PO Gonzalez attempts to grab her right wrist and bring it behind her back, but § 87(2)(b) turns clockwise to face him. § 87(2)(b) is continuously pleading about her arm as the officers try to place her arms behind her back. From the 3:11 mark to the 4:00 mark, there is an unseen struggle due to the time of night and poor lighting conditions of the porch; however, the struggle is made evident by quick movements captured in the video, which could indicate PO Gonzalez being pushed, and multiple voices yelling—coming from § 87(2)(b) the officers, and the civilians in the area. § 87(2)(b) is seen on the floor during the struggle, but it is not clear how she got there. At the 4:00 mark, handcuffs are heard again, after which she is successfully placed in handcuffs. PO Cole's BWC (BR03) does not provide more accurate video footage.

§ 87(2)(b) (BR04) testified that PO Gonzalez grabbed § 87(2)(b) by her right arm, and PO Cole grabbed her left arm. While grabbing her arms, both officers pushed § 87(2)(b) downwards and onto the ground. § 87(2)(b) first landed on her knees and then the officers further pushed her flat down. PO Cole twisted § 87(2)(b) arm back to secure the handcuffs on her. § 87(2)(b) sustained cuts on her left leg as a result of being taken to the ground, as they were outside, and the floor is rough. § 87(2)(b) and § 87(2)(b) mentioned that she had an arm injury multiple times throughout the incident. She provided a photograph (BR10) of her knee injuries, which are clearly visible.

PO Gonzalez (BR07) testified that when he and PO Cole attempted to place § 87(2)(b) in handcuffs, there were two males on the porch that were pushing them and pulling the officers' arms away and, consequently, preventing them from placing the handcuffs on her. PO Gonzalez attempted to push the civilians interfering away. PO Gonzalez told § 87(2)(b) to place her arms behind her back, but she refused by not complying with his command. Each time the officers grabbed her hands, she pulled away—resisting. PO Gonzalez told her to stop resisting in Spanish. The civilian pushing became so intense that § 87(2)(b) ended up on the ground. PO Gonzalez believed that she threw herself on the ground intentionally, landing on her buttocks. PO Gonzalez did not remember of § 87(2)(b) torso was upright the entire time she was on the ground, or if her position changed. § 87(2)(b) was upset and crying, but PO Gonzalez did not recall her making any specific statements about being in pain. PO Gonzalez did not recall if § 87(2)(b) or anyone else mentioned her having an arm injury. PO Cole and PO Gonzalez collectively placed the handcuffs on her wrists.

PO Cole (BR08) testified that, as he and PO Gonzalez attempted to retrieve the speaker from the porch, § 87(2)(b) approached them and began pushing them to prevent them from taking the speaker. As the officers attempted to place § 87(2)(b) in handcuffs, she was resisting by flailing her arms and pulling them away from the officers. There were multiple civilians around the officers that were pushing them, making the handcuffing process difficult for the officers. The officers attempted to use minimal force by attempting to hold § 87(2)(b) arms in place. As a result of all the pushing from the civilians and § 87(2)(b) resistance, she fell to the ground. PO Cole was not certain if her falling was intentional or if it was incident to the commotion, but he testified that he believed she landed on her buttocks. PO Cole was not certain how long she was on the ground, but he and PO Gonzalez helped her up. After about a few minutes, both officers successfully placed the handcuffs on § 87(2)(b) wrists. PO Cole did not recall § 87(2)(b) making any statements about being hurt or in pain. He did not recall § 87(2)(b) or anyone else making a statement about her having an arm injury, especially because the conversations were mostly in Spanish.

In determining whether the use of force is reasonable, members of service should consider

whether the subject is actively resisting custody, the number of subjects in comparison to the number of MOS, as well as the presence of a hostile crowd, among several other factors. Patrol Guide Procedure 221-01 (BR11).

A police officer may use physical force when and to the extent he reasonably believes to be necessary to effect an arrest, prevent the escape from custody, or in self-defense. New York State Penal Law 35.30 (BR16).

A person is guilty of obstructing governmental administration (OGA) when they intentionally obstruct, impair, or prevent the administration of law or other governmental function. New York State Penal Law 195.05 (BR12).

The video footage shows that, aside from § 87(2)(b) there were multiple other civilians in the porch area and near the officers, while said officers attempted to seize § 87(2)(b) speaker. § 87(2)(b) prevented the officers from taking the speaker, intentionally obstructing them from addressing the noise complaint call that brought them to the location. From the initiation of § 87(2)(b) restraint, she is shown visibly resisting by pulling away from the officers. Additionally, both PO Cole and PO Gonzalez expressed the active interference the crowd had in placing § 87(2)(b) in handcuffs. Despite the fact that § 87(2)(b) and § 87(2)(b) continuously mentioned her arm being unwell and the knee injuries she sustained during the incident (BR10), § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (E) Force: Police Officer Geordany Gonzalez used physical force against § 87(2)(b).

Allegation (F) Force: Police Officer O'Shane Cole used physical force against § 87(2)(b).

PO Gonzalez's BWC (BR02) shows that, at the 04:48 mark, PO Gonzalez and PO Cole are assisting § 87(2)(b) in entering the backseat of a patrol vehicle. PO Gonzalez opens the door to the backseat and guides her inside by placing her right arm into the vehicle, lowering her head as she went further inside, and finally, gently nudging her left arm further inside; PO Cole's arm is seen assisting PO Gonzalez in nudging her left arm. Neither PO Cole nor PO Gonzalez is not seen pushing § 87(2)(b) into the patrol vehicle or using any kind of force.

§ 87(2)(b) (BR04) testified that as PO Cole and PO Gonzalez escorted her to the patrol vehicle, they threw her into the vehicle by pushing her back.

PO Gonzalez (BR07) believed that he may have been the officer who escorted § 87(2)(b) to the patrol vehicle, but he was not certain. He did not mention using physical force to get § 87(2)(b) into the vehicle.

PO Cole testified (BR08) that he and PO Gonzalez escorted § 87(2)(b) to their police vehicle, after which he went to retrieve the speaker. He did not mention any force used when helping § 87(2)(b) into the vehicle.

§ 87(2)(g) the BWC captures PO Gonzalez and PO Cole helping § 87(2)(b) into the patrol vehicle without using force, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (G) Discourtesy: Police Officer O'Shane Cole spoke discourteously to an individual.

Allegation (H) Offensive Language: Police Officer O'Shane Cole made remarks to an individual based upon the gender of an individual.

PO Cole's BWC (BR03) shows that at the 05:50 mark, PO Cole is going back and forth

with an unseen civilian at a distance, at which point he says, “come say it to my face, pussy”. There are at least 10 civilians seen in the area, screaming and shouting.

§ 87(2)(b) (BR04) and the other civilians interviewed (BR05, BR06, BR15) did not allege any officer using profanity during the incident.

PO Cole (BR08) testified that he used profanity during the incident but did not remember exactly what he said. After reviewing his BWC (BR03), he acknowledged that he made the statement “come say it to my face, pussy” given the incident was heated, with civilians cursing at the officers. He was attempting to avoid using force by using his voice. There were no other reasons why PO Cole decided to use profanity during the incident.

The mission of the NYPD is centered around protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect. Patrol Guide Procedure 200-02 (BR18).

Uniformed members of service are prohibited from using discourteous or disrespectful remarks regarding another person’s ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability. Patrol Guide Procedure 203-10 (BR19).

A uniformed member of service using profanity is found to be permissible where the officer has resorted to such language in the heat of a highly dangerous situation or to serve a law enforcement purpose. Disciplinary Case 2013-10143 (BR20).

The Patrol Guide prohibits police officers’ use of discourteous statements. The Disciplinary Case noted above indicates that an officer is allowed to use discourteous statements when involved in a highly dangerous situation and the statement must serve a law enforcement purpose. At the time that PO Cole made a discourteous statement, § 87(2)(b) was already placed in custody, her speaker was seized, and officers began leaving the scene. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)


Civilian and Officer CCRB Histories

- § 87(2)(b)
- § 87(2)(b)
- PO Gonzalez has been a member of service for three and this is the first CCRB complaint to which he has been a subject.
- PO Cole has been a member of service for four years. He has been a subject in one other CCRB complaints and one allegation, which is still under investigation.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- On June 29, 2021, the Office of the New York City Comptroller confirmed that § 87(2)(b) has not filed a notice of claim regarding this incident (BR17).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: 11

Investigator:	 Signature	<u>Investigator Jessica Russo</u> Print Title & Name	<u>02/16/2022</u> Date
Squad Leader:	<u>Edwin Pena</u> Signature	<u>IM Edwin Pena</u> Print Title & Name	<u>07/12/21</u> Date
Reviewer:	_____ Signature	_____ Print Title & Name	_____ Date